

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2011-0903, Lancelot Court Condominium Association v. Judith Tompson, the court on September 27, 2012, issued the following order:

Having considered the briefs and limited record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). We affirm.

The defendant, Judith Tompson, appeals the trial court's periodic payment order requiring her to pay \$25 per month to the plaintiff, Lancelot Court Condominium Association, on a judgment in the amount of \$1,484. She argues that the trial court erred because: (1) she requested a jury trial; (2) the plaintiff's counsel had a conflict of interest; (3) the plaintiff's financial records were inaccurate; (4) a property lien was filed in error; (5) her motions were ignored; (6) the plaintiff's counsel failed to expedite the proceedings; (7) there was no final decision in the case; (8) there was no basis for a contempt hearing; and (9) the plaintiff's counsel violated the intent of the condominium statutes. We assume, without deciding, that the appeal is timely as to each of these issues.

The defendant first argues that the trial court erred in entering a verdict against her because she had claims against the plaintiff, and had filed a motion requesting that the case be transferred to federal court for a jury trial. As the appellant, the defendant has the burden to demonstrate error and to provide an adequate record for our review. Coyle v. Battles, 147 N.H. 98, 100 (2001); see also In the Matter of Birmingham & Birmingham, 154 N.H. 51, 56 (2006) (pro se litigants are bound by the same procedural rules that govern parties represented by counsel). RSA 502-A:14, III (2009) provides that the defendant may, under certain circumstances, request that a case filed in the district division be transferred to the superior court for a jury trial. A separate federal statute contains specific requirements that must be followed to remove a civil matter filed in state court to federal court. See 28 U.S.C. § 1446(a) & (b) (2006) (defendant must file notice of removal in federal district court within 30 days of service). The record shows that the defendant moved to have the case transferred to the federal district court for a jury trial, asserting diversity jurisdiction. The record fails to show that the defendant complied with the statutory requirements for having the case transferred to the superior court for a jury trial. Nor does the record show that the defendant properly sought removal to federal court. Accordingly, we find no error.

The defendant next asserts that the plaintiff's counsel had a conflict of interest in violation of the rules of professional conduct. We construe her argument to be that the trial court erred in failing to disqualify counsel from representing the plaintiff. We have noted the potential for abuse of the disqualification rules when a party seeks to disqualify opposing counsel. See, e.g., Goodrich v. Goodrich, 158 N.H. 130, 136 (2008). A disqualification motion in the corporate setting, in particular, must be approached with caution. See id. When examining the trial court's decision on this issue, we defer to its findings of fact if they are supported by the evidence and not erroneous as a matter of law. Id. at 137. The record shows that the defendant objected to counsel's representation of the plaintiff because of his multiple roles as unit owner, board member, trustee, and counsel. The record also shows that the defendant raised each of her issues concerning the plaintiff's counsel in a grievance filed with the attorney discipline office, which found no potential violations of the rules of professional conduct. Based upon this record, we cannot conclude that the trial court was required to find that a disqualifying conflict of interest existed. Accordingly, we find no error.

The defendant next argues that the trial court erred in determining the amount she owed because the plaintiff's records were inaccurate. First, we defer to a trial court's judgment on such issues as resolving conflicts in testimony, measuring the credibility of witnesses, and determining the weight to be given evidence. In the Matter of Aube & Aube, 158 N.H. 459, 465 (2009). Second, the defendant has not provided transcripts of the hearings prior to the November 30, 2011 hearing, during which the evidence of her indebtedness was presented. As previously noted, it is the appealing party's burden to provide this court with a record sufficient to decide her issues on appeal. See Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004); see also Sup. Ct. R. 15(3) ("If the moving party intends to argue in the supreme court that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion."). Absent a transcript of the trial court hearings, we must assume that the evidence was sufficient to support the trial court's determination. See Atwood v. Owens, 142 N.H. 396, 396 (1997).

The defendant next argues that the trial court erred in denying her motion to remove a property lien. She asserts that the financial documents in support of the lien were inaccurate and that special assessments and late fees were included in violation of RSA 356-B:46 (Supp. 2011). As previously noted, based upon the limited record available for our review, we must assume the evidence of indebtedness was sufficient to support the trial court's decision. Atwood v. Owens, 142 N.H. at 396. In addition, we agree with the plaintiff that the defendant's statutory argument is based upon a version of the statute that became effective after its lien was filed. Compare RSA 356-B:46, I(c) (Supp. 2011) with 356-B:46, I (2009). Accordingly, we find no error.

The defendant next argues that “all motions filed by [her] were ignored.” As part of the record in support of this argument, she provided a compact disk containing twenty-eight motions she filed in the trial court. Our rules require the moving party to make a specific reference in the record demonstrating where the issue raised on appeal was presented in the trial court. Blagbrough Family Realty Trust v. A & T Forest Prods., 155 N.H. 29, 35 (2007); see Sup. Ct. R. 16(3)(b). The defendant has not identified any specific motion that was ignored. Moreover, we assume that the trial court, by concluding that the plaintiff was entitled to judgment, rejected any interlocutory matters that the defendant may have raised. See Burke v. Pierro, 159 N.H. 504, 510 (2009). (trial court’s trespass order necessarily rejected defendants’ prior use theory). According to the plaintiff, the only motion that may not have been addressed was the defendant’s motion for summary judgment. Because a denial of summary judgment is ordinarily interlocutory, see Richardson v. Chevrefils, 131 N.H. 227, 231 (1988), and may be revisited by the trial court at any time prior to final judgment, see Radziewicz v. Town of Hudson, 159 N.H. 313, 315 (2009), and because we cannot conclude, based upon this record, that the trial court erred in entering judgment for the plaintiff, we find no error. See Ortiz v. Jordan, 131 S.Ct. 884, 889 (2011) (trial record supersedes summary judgment record).

The defendant next argues that the plaintiff’s counsel failed to expedite the proceedings, which we construe as an objection to the trial court’s management of the proceedings. The trial court has broad discretion in managing the proceedings before it. In the Matter of Conner & Conner, 156 N.H. 250, 252 (2007). We review a trial court’s rulings in this area under an unsustainable exercise of discretion standard. Id. To establish that the court erred under this standard, the defendant must demonstrate that the court’s rulings were clearly untenable or unreasonable to the prejudice of her case. Id. Based upon our review of the record, and considering each of the issues raised by the defendant, we cannot conclude that the trial court unsustainably exercised its discretion in the management of the proceedings.

The defendant next argues that the trial court erred in ordering her to make periodic payments because there was no final decision in this case. The trial court may order a defendant to make periodic payments either when judgment is rendered or after judgment is entered. See RSA 524:6-a (Supp. 2011). The November 30, 2011 order for payments states the amount of the judgment, \$1,484 plus costs, and orders payment in monthly installments of \$25. Even assuming, without deciding, that the trial court failed to enter a final decision prior to the November 30, 2011 hearing, the periodic payment order effectively functions as a final decision. We conclude that the defendant has failed to show any prejudice from any failure of the trial court to enter

judgment prior to the periodic payment hearing. See McIntire v. Lee, 149 N.H. 160, 167 (2003) (explaining that “[a]n error is considered harmless if it is trivial, or formal, or merely academic, and was not prejudicial to the substantial rights of the party asserting it”).

The defendant next argues that the court erred in issuing a hearing notice ordering her to show cause why she should not be held in contempt for failing to pay the judgment, asserting that there was no basis for a contempt finding. The record shows that the plaintiff’s attorney was not seeking a contempt finding and that the court made no such finding. Accordingly, the defendant has failed to show any prejudice. See id.

Finally, the defendant argues that the plaintiff violated the intent of the condominium laws, which she asserts are ineffective and unfairly allow condominium associations to record liens and take other allegedly wrongful actions. As we have repeatedly recognized, the wisdom and reasonableness of the legislative scheme are for the legislature, not the courts, to determine. See, e.g., Blackthorne Group v. Pines of Newmarket, 150 N.H. 804, 810 (2004).

The defendant’s remaining arguments warrant no extended consideration. See Vogel v. Vogel, 137 N.H. 321, 322 (1993). The plaintiff’s request that we dismiss the appeal on timeliness grounds is moot.

Affirmed.

Dalianis, C.J., and Hicks, Conboy, Lynn, and Bassett, JJ., concurred.

**Eileen Fox,
Clerk**

Distribution:

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